

**CITY PLANNING & ZONING COMMISSION
MEETING MINUTES
September 28, 2011**

The Bismarck Planning & Zoning Commission met on September 28, 2011, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chairman Yeager presided.

Commissioners present were Mark Armstrong, Tom Atkinson, Mel Bullinger, Curt Juhala, Vernon Laning, Ken Selzler, Mike Schwartz, Lisa Waldoch, John Warford and Wayne Yeager.

Commissioner Doug Lee was absent.

Staff members present were Carl Hokenstad – Community Development Director, Kim Lee – Planning Manager, Gregg Greenquist – Planner, Jason Tomanek – Planner, Kimberley Gaffrey – Office Assistant III, Mark Berg – Traffic Engineer and Charlie Whitman – City Attorney.

Others present were Loran Galpin – 501 East Main Avenue, Cary Schilling – 2017 Bruce Avenue, Edina, MN, Annette Schilling – 2988 Ontario Lane, Harvey & Diane Schilling – 3140 Winnipeg Drive, Jake Axtman – 909 Basin Avenue, Blaine Durick – 300 North 7th Street and Rose Laning – 4121 78th Avenue NE.

MINUTES

Chairman Yeager called for consideration of the minutes of the August 24, 2011 meeting.

MOTION: Commissioner Armstrong made a motion to approve the minutes of the August 24, 2011 meeting as received. Commissioner Laning seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Laning, Selzler, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

INTRODUCTION OF COMMISSIONER MIKE SCHWARTZ

Chairman Yeager introduced Mike Schwartz, a new Commissioner representing the City.

CONSIDERATIONS –

**MAJOR PUD AMENDMENT – LOT 7, BLOCK 11, NORTHERN PACIFIC ADDITION
ZONING CHANGE – LOTS 4-5, BLOCK 6, STONECREST 2ND ADDITION
ZONING ORDINANCE TEXT AMENDMENT – OFF-STREET PARKING &
LOADING/VEHICLE STACKING**

Chairman Yeager called for consideration of the following consent agenda items:

- A. A Major PUD Amendment for Lot 7, Block 11, Northern Pacific Addition. The property is located along the east side of North 3rd Street between East Avenue B and East Avenue C (613 North 3rd Street). The PUD Amendment would allow a 3-story, mixed use building

with two apartments, office space, salon, craft & gifts sales, day care facility and off-street parking.

- B. A zoning change from the R10-Residential zoning district to the CG-Commercial zoning district for Lots 4-5, Block 6, Stonecrest Second Addition. The property is 2 lots in 1 block on 1.21 acres, located in northeast Bismarck, less than ½ mile north of Century Avenue on the west side of Centennial Avenue.
- C. A zoning ordinance text amendment relating to off-street parking & loading/vehicle stacking. The proposed amendments would specify off-street vehicle stacking requirements for drive-through facilities for various types of uses.

At the request of staff, Chairman Yeager pulled items A and C from the consent agenda for further discussion.

MOTION: Based on the findings contained in the staff report, Commissioner Warford made a motion to approve Consent Agenda item B calling for a public hearing on the item. Commissioner Atkinson seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Laning, Selzler, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

For Consent Agenda Item A, Mr. Tomanek said the staff recommendation included in the agenda packet is to deny the major PUD Amendment for Lot 7, Block 11, Northern Pacific Addition because of concerns expressed by the City Traffic Engineer. When the staff report was written, Mr. Galpin and the Traffic Engineer had not had the opportunity to discuss the issues; however, staff is willing to work with Mr. Galpin to come up with improvements to help this project move forward and suggested the public hearing should be scheduled.

MOTION: Based on the findings contained in the staff report, Commissioner Warford made a motion to call for a public hearing on Consent Agenda item A. Commissioner Waldoch seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Laning, Selzler, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

Commissioner Juhala arrived at the meeting at 5:06 p.m.

For Consent Agenda Item CMs. Lee stated the proposed ordinance that was included in the packet was incorrect and she distributed the revised proposed ordinance to the commissioners.

MOTION: Based on the findings contained in the staff report, Commissioner Armstrong made a motion to approve Consent Agenda item C calling for a public hearing on the item. Commissioner Laning seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Juhala, Laning, Selzler, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

FINAL CONSIDERATION – ANNEXATION – LOTS 9-12 & 15, BLOCK 5; LOTS 4-7, BLOCK 6; LOTS 1-4, BLOCK 7; LOTS 3-13 & 15-18, BLOCK 8 AND LOTS 29-30, BLOCK 9, PROMONTORY POINT IV

Chairman Yeager called for the final consideration for the annexation for Lots 9-12 & 15, Block 5; Lots 4-7, Block 6; Lots 1-4, Block 7; Lots 3-13 & 15-18, Block 8 and Lots 29-30, Block 9, Promontory Point IV. The property is located in northwest Bismarck on the plateau located between Tyler Coulee and River Road (in the SE ¼ of Section 24, T139N- R81W/ Hay Creek Township and in the W ½ of Section 19, T139N-R80W/Hay Creek Township).

Mr. Greenquist provided an overview of the request and listed the following findings for the annexation:

1. The City and other agencies would be able to provide necessary public services, facilities and programs to serve the development allowed by the annexation.
2. There is currently only one access road serving the existing Promontory Point developments. Valley Drive will provide the second access and will be constructed prior to building permits being issued for the lots within the outlined area shown in Exhibit A, as attached to the staff report.
3. The proposed annexation would not adversely affect property in the vicinity.
4. The proposed annexation is consistent with the general intent and purpose of the zoning ordinance.
5. The proposed annexation is consistent with the master plan, other adopted plans, policies and planning practice.

Mr. Greenquist said based on the above findings, staff recommends annexation of 9-12 & 15, Block 5; Lots 4-7, Block 6; Lots 1-4, Block 7; Lots 3-13 & 15-18, Block 8 and Lots 29-30, Block 9, Promontory Point IV.

MOTION: Based on the findings contained in the staff report, Commissioner Laning made a motion to approve the annexation of Lots 9-12 & 15, Block 5; Lots 4-7, Block 6; Lots 1-4, Block 7; Lots 3-13 & 15-18, Block 8 and Lots 29-30, Block 9, Promontory Point IV. Commissioner Juhala seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Juhala, Laning, Selzler, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

FINAL CONSIDERATION – ANNEXATION – LOT 14, BLOCK 1, KILBER ADDITION

Chairman Yeager called for the final consideration for the annexation for Lot 14, Block 1, Kilber Addition. The property is located along the east side of North 26th Street north of Divide Avenue.

Ms. Lee provided an overview of the request and listed the following findings for the annexation:

1. As this lot is being combined with the adjacent developed lot, the City and other agencies would be able to provide necessary public services, facilities and programs to serve the development allowed by the annexation.
2. The proposed annexation would not adversely affect property in the vicinity.
3. The proposed annexation is consistent with the general intent and purpose of the zoning ordinance.
4. The proposed annexation is consistent with the master plan, other adopted plans, policies and planning practice.

Ms. Lee then provided the following additional information:

1. The applicant proposes to annex this property and combine it with the adjacent property to the east, which is under his ownership, located in the corporate limits and developed. This is the only lot in Kilber Addition that has not been annexed.
2. Concerns have been expressed regarding access to this parcel, as North 26th Street is not improved adjacent to this lot.

Ms. Lee said based on the above findings, staff recommends the annexation of Lot 14, Block 1, Kilber Addition and the east half of the adjacent North 26th Street right-of-way.

MOTION: Based on the findings contained in the staff report, Commissioner Armstrong made a motion to approve the annexation of Lot 14, Block 1, Kilber Addition and the east half of the adjacent North 26th Street right-of-way. Commissioner Warford seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Juhala, Laning, Selzler, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

CONTINUED PUBLIC HEARING – MINOR SUBDIVISION FINAL PLAT – MIRIAM INDUSTRIAL PARK SECOND ADDITION FIRST REPLAT

Chairman Yeager continued the public hearing for the minor subdivision final plat for Miriam Industrial Park Second Addition First Replat. The property is located in east Bismarck, along the west side of Industrial Drive, approximately ¾ of a mile south of the I-94 interchange (a replat of the north 409.71 feet of Lot 17, Miriam Industrial Park Second Addition in part of the NE¼ of Section 35, T139N-R80W/Hay Creek Township).

Mr. Tomanek provided an overview of the request and listed the following findings for the minor subdivision final plat:

1. All technical requirements for approval of a minor subdivision final plat have been met.
2. The proposed subdivision is outside the boundaries of the Fringe Area Road Master Plan.

3. The storm water management plan has been approved by the City Engineer.
4. The proposed subdivision would be compatible with adjacent land uses. Adjacent land uses include developed industrial land to the south and north, partially-developed residential land separated by the CP Railway railroad line and the Hay Creek corridor to the west, Bismarck Expressway and undeveloped property to the east.
5. The property is already annexed; therefore, the proposed subdivision would not place an undue burden on public services.
6. The proposed subdivision would not adversely affect property in the vicinity.
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
8. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Mr. Tomanek said based on the above findings, staff recommends approval of minor subdivision final plat of Miriam Industrial Park Second Addition First Replat.

Chairman Yeager opened the public hearing for the minor subdivision final plat for Miriam Industrial Park Second Addition First Replat.

No public comment was received.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Laning made a motion to approve the minor subdivision final plat for Miriam Industrial Park Second Addition First Replat. Commissioner Waldoch seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Juhala, Laning, Selzler, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – MAJOR PUD-PLANNED UNIT DEVELOPMENT AMENDMENT – LOT 1, BLOCK 1, SCHILLING FIRST SUBDIVISION

Chairman Yeager called for the public hearing for the Major PUD-Planned Unit Development Amendment for Lot 1, Block 1, Schilling First Addition. The property is located along the north side of 43rd Avenue NE just east of US Highway 83 (1400 43rd Avenue NE). The PUD Amendment would allow the remaining western portion of the property to be developed with a five-story mixed-use building.

Mr. Tomanek provided an overview of the request and listed the following findings for the PUD-Planned Unit Development Amendment:

1. The proposed amendment to the PUD would be consistent with the US Highway 83 Corridor Transportation Study recommendations, which identifies this area as commercial and mixed uses. Mixed uses include residential, office and commercial uses.
2. The proposed PUD amendment is compatible with adjacent land uses. Adjacent land uses include partially-developed commercial property to the north, undeveloped, commercially-zoned property to the east, office uses south of 43rd Avenue NE and US Highway 83 to the west.
3. The area is already annexed; therefore the proposed PUD amendment would not place an undue burden on public services.
4. The proposed PUD amendment would not adversely affect property in the vicinity.
5. The proposed PUD amendment is consistent with the general intent and purpose of the zoning ordinance.
6. The proposed PUD amendment is consistent with all adopted plans, policies and accepted planning practice.

Mr. Tomanek then listed the following additional information:

1. The property was zoned as a PUD in 1996 for the purposes of creating a storage facility with up to 12 buildings and one single-family dwelling to be constructed on-site.
2. In 2003 the owners submitted an application for an amendment to the PUD to allow the construction of an “over and under” storage building and installing landscaping in-lieu of a previously-proposed security wall. It was determined that the applicant’s proposal did not constitute a major change from the original PUD. No action was taken on the request and the application was withdrawn.
3. Currently there are six storage buildings located on the eastern 320 feet of the parcel. The west 334 feet is vacant and undeveloped. The site is accessed by a single approach off of 43rd Avenue NE. The site plan included with the application indicates the continued use of the existing driveway.
4. Section 14-04-18 of the Bismarck Code of Ordinances (Zoning) indicates that the intent of the City’s Planned Unit Development district is “to encourage flexibility in development of land in order to promote its most appropriate use; to improve the design, character and quality of new development; to facilitate the adequate and economical provision of streets and utilities; and to preserve the natural and scenic features of open space.” A copy of this section is attached.
5. The first two storage buildings in the original PUD were constructed in 1997. In 2003 a site plan was submitted and approved for the second phase of buildings; the plan included landscaping throughout the property. At this time, no landscaping has been installed on the property. Information and correspondence from the applicant in the project file states, “We

will commit to planting trees and shrubbery around the perimeter of the PUD at a time when we and the City Forester feel confident that we will not disrupt services provided by the cable company and most of the additional fill has been placed next to the PUD.”

6. The site plan that was submitted in conjunction with the special use permit application in 1996 demonstrated a series of storage buildings, a residential dwelling and screening/security walls around the facility. The development of the current facility has deviated from the original proposal.
7. The proposed development is subject to the City’s site plan review, building plan review, and permitting processes prior to the commencement of development.

Mr. Tomanek said based on the above findings, staff recommends approval of the Major PUD amendment for Lot 1, Block 1, Schilling First Addition, as outlined in the PUD Amendment document attached to the staff report.

Commissioner Laning asked if staff has received any comments from the neighbors regarding this request. Mr. Tomanek responded by saying no comments have been received in regards to the proposed Major PUD Amendment, rather one inquiry about the 43rd Avenue corridor future alignment and how it will relate to the final street grades for North 15th Street.

Chairman Yeager called for the public hearing for the Major PUD amendment for Lot 1, Block 1, Schilling First Addition.

No comment was received.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff reports, Commissioner Juhala made a motion to approve the Major PUD Amendment for Schilling First Subdivision. Commissioner Selzler seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Juhala, Laning, Selzler, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – SPECIAL USE PERMIT FOR LOTS 1-10, BLOCK 68, ORIGINAL PLAT

Chairman Yeager called for the public hearing for a special use permit to allow the expansion of an accessory parking lot within the DC-Downtown Core zoning district. The property is located along the west side of North 6th Street between Broadway Avenue and Thayer Avenue.

Mr. Tomanek provided an overview of the request and listed the following findings for the special use permit:

1. The proposed special use meets all the standards for accessory parking in the DC-Downtown Core zoning district outlined in Section 14-04-21.4(6).

2. The proposed special use would comply with all applicable provisions of the zoning ordinance and would be consistent with the general intent and purpose of the zoning ordinance.
3. The proposed special use would not adversely affect the public health, safety and general welfare.
4. The proposed special use may be detrimental to the use or development of adjacent properties; in particular, the use of land as a surface parking lot within the downtown area is counter-productive to the concept of a high-density, mixed-use area. The 1993 Central Business District Master Plan calls for a portion of this area to be developed as a public plaza/open space to complement the civic features currently offered by the Belle Mehus City Auditorium, the World War Memorial Building, the Burleigh County Courthouse and the City/County Office Building. The property is surrounded primarily by publicly-owned property with efforts to promote a public square, open space or community-related space that provides opportunity for public events. The detrimental use as an accessory off-street parking lot is mitigated by the fact that the use as a parking lot would not preclude the redevelopment of this property with a higher-density use.
5. The use would be designed, operated and maintained in a manner that would be compatible with the appearance of the existing character of the surrounding area. In particular, landscaping and screening improvements adjacent to the additional area are proposed. The proposed landscaping elements meet the intent of the landscaping and screening ordinance.
6. Adequate public facilities and services are in place.
7. The use may cause a negative cumulative effect, when considered in conjunction with the cumulative effect of other uses in the immediate vicinity. In particular, the investment and development of an additional surface parking lot in the DC-Downtown Core zoning district may further hamper efforts to promote this area as an opportunity for a public gathering space, public parking structure or other development that may impact the positive growth and improvement of the downtown area. By reducing the initial development requirements, it would provide time to explore future potential uses of the property.
8. Adequate measures have been taken to minimize traffic congestion in the public streets and provide for appropriate on-site circulation of traffic, in particular, one gated access would be available to access the property off Thayer Avenue.

Mr. Tomanek then listed the following additional information:

1. Section 14-04-21 (Downtown Districts) of the City Code of ordinances requires a special use permit for the creation or expansion of an off-street accessory parking lot.
2. During the winter of 2010-2011, Medcenter One (MCO) demolished three buildings along the south half of the property to allow for the expansion of the existing asphalt parking lot currently located on the north half of the property. This project would improve the existing use as a gravel parking lot by providing an asphalt surface and landscaping.

3. The proposed improvements include grading and paving the south 125 feet (+/-) of the property with the inclusion of curb and gutter along the east, south and western perimeters of the property, landscaping along the east and west perimeters of the parking area and additional lighting within the proposed expansion area of the off-street parking lot.
4. With the idea that this area of downtown Bismarck has a potential for higher and better uses than a surface parking lot, the Planning Division has approached MCO with an offer to relax some of the requirements typically associated with the creation of an off-street surface lot in the DC-Downtown Core zoning district, with the understanding that the relief from the ordinance requirements would be conditional and limited to a maximum of five years from the date the special use permit would be granted. As recently as 2010, the City of Bismarck had planned to develop this area as a new six level, 420+ car parking facility.
5. In an effort to limit the development costs associated with an off-street parking lot, the Planning Division has suggested to MCO that the installation of the landscaping along the west side of the property adjacent to the public alley be withheld for a period up to five years and would be contingent upon possible future uses of the property.
6. To mitigate the need for additional improvements, including drip irrigation and additional electrical needs, it was suggested that the plant material along the east side should be drought tolerant with consideration given to native or ornamental grasses.

Mr. Tomanek said that based on the above findings, staff recommends approval of the special use permit to allow the expansion of an existing off-street accessory parking lot on Lots 1-10, Block 68, Original Plat with the following conditions:

1. Development of the site generally conforms to the site plan submitted in conjunction with the request for a special use permit.
2. The installation of the plant material along the west property line is delayed for a period of five years from the date the special use permit is granted to allow the continued efforts of the public and private sectors an opportunity to explore higher and better uses of the property. If another use does not occur at this location, the landscaping would need to be installed.
3. The plant material along the east side of the property and shown on the site plan would be installed in conjunction with the site improvements necessary for the expansion of the off-street parking lot.

Chairman Yeager called for the public hearing for the special use permit to allow the expansion of an existing off-street accessory parking lot on Lots 1-10, Block 68, Original Plat.

No public comment was received.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Juhala made a motion to approve the request for a special use permit to allow the expansion of an existing off-street accessory parking lot on Lots 1-10, Block 68, Original Plat with the following conditions: 1) Development of the site generally conforms to the site plan submitted in conjunction with the request for a special use permit; 2) The installation of the plant material along the west property line is delayed for a period of five years from the date the special use permit is granted to allow the continued efforts of the public and private sectors an opportunity to explore higher and better uses of the property. If another use does not occur at this location, the landscaping would need to be installed; and 3) The plant material along the east side of the property and shown on the site plan would be installed in conjunction with the site improvements necessary for the expansion of the off-street parking lot. Commissioner Laning seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Juhala, Laning, Selzler, Schwartz, Waldoch, Warford and Yeager voting in favor of the motion.

OTHER BUSINESS

There was no other business.

ADJOURNMENT

There being no further business Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 5:38 p.m. to meet again on October 26, 2011.

Respectfully submitted,

Kimberley Gaffrey
Recording Secretary

Wayne Yeager
Chairman